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Attorneys for Defendant Bank of America, N.A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

JAMES L. BARKER, and
JEANNE A. BARKER,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,
ONEWEST BANK, CIT BANK, N.A.,
FIRST AMERICAN TITLE COMPANY
OF MONTANA, INC., Trustee,
CHARLES PETERSON, Trustee

Defendants.

Case No. _____

**DEFENDANT BANK OF
AMERICA, N.A.'S NOTICE OF
REMOVAL**

COMES NOW Defendant Bank of America, N.A. ("BANA" or
"Defendant"), by and through their counsel of record, and notifies the Court of the
removal of *James L. Barker and Jeanne A. Barker v. Bank of America, N.A.,
Onewest Bank, Cit Bank, N.A., First American Title Company of Montana, Inc.,*

and Charles Peterson, Cause No. DV-16-184 from the Montana Sixth Judicial District Court, Park County, to the United States District Court for the District of Montana, pursuant to 28 U.S.C. § 1331 and states as follows:

1. This action has been removed to federal court based upon federal question under 28 U.S.C. § 1331.
2. On December 7, 2016, Plaintiffs James L. Barker and Jeanne A. Barker filed an action in the Montana Sixth Judicial District Court, Park County, bearing Cause Number DV-16-184 (the “state action”) in the records and files of that Court.
3. On January 26, 2017, Plaintiffs served this action on BANA. BANA is informed and believes that the other Defendants have not been served and their consent will not be required until service is made upon them.

**REMOVAL PURSUANT TO FEDERAL QUESTION
28 U.S.C. § 1331**

4. Pursuant to 28 U.S.C. §1331, the United States District Court for the District of Montana has original jurisdiction of this civil action brought in state court because Plaintiffs allege claims arising under the laws of the United States.
5. More specifically, Plaintiffs allege that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692, et. seq., including without limitation, §§ 807, 808 and 809. (Compl., Count III, ¶ 23). Plaintiffs’ claims will require a determination of the application and scope of such law.

6. This action may be properly removed to this Court under 28 U.S.C. §1441(a) because it is a civil action over which this court has original jurisdiction and because removal is being made to the district court of the United States for the district and division embracing the place where the action is pending, Park County, Montana being within the Billings Division of this Court. L.R. 1.2(c)(1).

7. Further, this Court has supplemental jurisdiction over the remaining causes of action in the Complaint under 28 U.S.C. § 1367 as they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367(a).

8. The first date upon which Bank of America, N.A. received a copy of the Complaint was January 26, 2017, when service of process of the Summons and Complaint was effectuated upon Bank of America, N.A. This Notice of Removal is being filed within 30 days of such service upon the Defendant and is thus timely pursuant to 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S. Ct. 1322 (1999).

NOTICE

9. Copies of all process, pleadings and orders served in this case upon this Defendant and filed in the Montana Sixth Judicial District Court, Park County, comprising the Summons and First Amended Complaint, are attached as Exhibit A. Additionally, copies of all process, pleadings and orders filed in this case are being

forwarded to this Court by the Clerk's Office of the Montana Sixth Judicial District Court, Park County.

10. Pursuant to 28 U.S.C. §1446(d), Defendant Bank of America, N.A. has given written notice of the filing of this Notice of Removal to all adverse parties in this action and will promptly file a copy of the notice with the Clerk of Court for the Montana Sixth Judicial District Court, Park County.

WHEREFORE, Defendant respectfully request that this case continue to proceed before this Court as an action properly removed.

DATED this 16th day of February, 2017.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Mark D. Etchart

Mark D. Etchart

Attorneys for Defendant Bank of America, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2017, a true copy of the foregoing was served:

Via ECF and U.S. Mail to the following parties:

Karl Knuchel
Karl Knuchel, P.C.
PO BOX 953
Livingston, MT 59047
Counsel for Plaintiffs

/s/ Mark D. Etchart
BROWNING, KALECZYC, BERRY & HOVEN, P.C.